

District Judge Jamal N. Whitehead

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PLAINTIFF PACITO; PLAINTIFF
ESTHER; PLAINTIFF JOSEPHINE;
PLAINTIFF SARA; PLAINTIFF ALYAS;
PLAINTIFF MARCOS; PLAINTIFF
AHMED; PLAINTIFF RACHEL;
PLAINTIFF ALI; HIAS, INC.; CHURCH
WORLD SERVICE, INC.; and
LUTHERAN COMMUNITY SERVICES
NORTHWEST,

Plaintiffs,

v.

DONALD J. TRUMP, in his official
capacity as President of the United States,
MARCO RUBIO, in his official capacity
as Secretary of State, KRISTI NOEM, in
her official capacity as Secretary of
Homeland Security; DOROTHY A. FINK,
in her official capacity as Acting Secretary
of Health and Human Services,

Defendants.

CASE NO. 2:25-cv-00255

RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
EMERGENCY CONFERENCE TO
ADDRESS DEFENDANTS'
COMPLIANCE WITH PRELIMINARY
INJUNCTION

NOTE ON MOTION CALENDAR: JUNE
25, 2025

INTRODUCTION

Defendants have worked diligently to implement the Court’s first injunction as narrowed by the Ninth Circuit’s stay and clarification orders. Plaintiffs once again misconstrue those orders to expand the application of the largely stayed injunction in a way that does not square with the Circuit’s narrow carveout of its injunction stay. *See Pacito, et al., v. Trump, et al.*, No. 25-1313, at 4 (Apr. 21, 2025).

Plaintiffs erroneously claim Defendants have brought the implementation of the Ninth Circuit’s carveout to a “near halt” because Proclamation 10949 prevents some potential “injunction-protected” refugees from entering the United States. From there, they leap to asking this Court to order the Government to begin immediately processing large swaths of individuals, beyond the 160 who had been booked for travel in the first two weeks after the issuance of the USRAP Order. But Proclamation 10949 is a separate executive action not at issue in this case, and it acts as an independent source of executive authority for entry restrictions that the Court’s injunction here did not and could not preclude. Going a step further, Plaintiffs also contend individuals whose travel was cancelled *any* time prior to January 20, 2025, for *any* reason (even unrelated to the USRAP Order), somehow fall within the limited carveout. But the Ninth Circuit has repeatedly rejected Plaintiffs’ overbroad readings of its orders and would likely do so again here. At bottom, Plaintiffs seek to grossly enlarge the pool of people who would be processed and admitted despite the Circuit’s otherwise broad stay. This Court should reject that excessive overreach and allow the government to continue in its steady implementation of the sharply narrowed injunction.

RELEVANT BACKGROUND

Plaintiffs claim Defendants have slowed implementation of the Court’s orders to a “near halt.” Pls’ Mot. 7. That is a baseless accusation. Defendants have worked diligently to

1 process, admit, and provide resettlement services to the individuals who fall within the Ninth
2 Circuit's narrow stay carveout.

3 The State Department's Bureau of Population, Refugees, and Migration (PRM)
4 unsuspended five Resettlement Support Centers (RSCs) and instructed them, on May 20, to
5 begin overseas processing of the carveout cohort. Chretien Decl. ¶ 5. Active RSCs include
6 RSC Africa, RSC Asia, RSC Latin America, RSC Eurasia, and RSC Middle East and North
7 Africa. *Id.* ¶ 4. On May 21, PRM notified domestic Resettlement Agencies (RAs) of the
8 agency's intent to lift the suspension of their respective awards to provide Reception and
9 Placement services to arriving refugees from the cohort. *Id.* ¶ 6. Between May 21 and June 4,
10 the awards for the following RAs were reinstated: Bethany Christian Services, Church World
11 Service, Ethiopian Community Development Council, Global Refuge, HIAS, International
12 Rescue Committee, U.S. Committee for Refugees & Immigrants, and World Relief. *Id.* These
eight RAs are operational and ready to receive cases assured to them. *Id.* ¶ 7.

13 By May 9, PRM made requests with the U.S. Centers for Disease Control and
14 Prevention (CDC) to extend the validity of medical checks for individuals who remained in
15 processing from the cohort of 160. *Id.* ¶ 8. By May 29, the RSCs made new requests for
16 medical checks for any individuals whose medical check validity could not be extended by the
17 CDC. *Id.* ¶ 9. On the security front, by May 12, PRM requested new NVC security checks for
18 individuals who remained in processing from the cohort of 160. *Id.* ¶ 10.

19 Of the 160 individuals with travel booked for the weeks of January 20 and January 27,
20 37 individuals have already been admitted into the United States, leaving 124 individuals (53
21 cases) in overseas processing as of June 9. On June 12, three individuals (one case) elected to
22 voluntarily repatriate to Afghanistan, and, on June 17, USCIS confirmed that one FTJ-R from
23 the cohort self-traveled to the United States in March. *Id.* ¶ 11. Currently, 120 individuals (51
cases) remain in overseas processing. *Id.*

Of the 120 individuals who remain in processing as of June 30, 80 individuals are nationals of countries designated in Proclamation 10949, while 40 individuals are not. *Id.* ¶ 12. Thirty-three individuals (14 cases) comprised entirely of individuals who are not from countries designated in Proclamation 10949 are ready for departure and await exit permits and/or flight booking. *Id.* ¶ 13. This includes Plaintiff Pacito and others in his case, who are booked to arrive in the United States on July 10. *Id.* ¶ 14. Additionally, seven individuals (two cases) are booked to arrive the week of June 30, and 10 individuals (six cases) are booked to arrive the week of July 7. *Id.*

ARGUMENT

I. This Court’s first preliminary injunction does not override a separate executive order lawfully issued under 8 U.S.C. § 1182(f).

Plaintiffs suggest Defendants are not in full compliance with this Court’s narrowed injunction because a separate presidential proclamation not at issue in this case suspends admission of nationals of certain designated countries. Pls’ Mot. 4–5 (referring to Proclamation 10949). That assertion is meritless.

Defendants’ enforcement of Proclamation 10949 is consistent with the Ninth Circuit’s stay order because it is a separate presidential order that suspends admission of aliens (both refugees and non-refugees) from certain countries for reasons wholly independent of the USRAP Order. *See* Proclamation 10949 §§ 1–3. Proclamation 10949 invokes the President’s statutory and constitutional authority to broadly restrict entry in response to national security risks stemming from deficient screening and vetting standards in the identified countries—it does not rely on or refer to the USRAP Order or its independent justifications in any way. *See Trump v. Hawaii*, 585 U.S. 667, 706 (2018) (finding there was “persuasive evidence that the entry suspension ha[d] a legitimate grounding in national security concerns, quite apart from any religious hostility,” and that it “must accept that independent justification”).

1 The first injunction does not preclude the President from suspending entry of refugees
 2 for reasons unrelated to the refugee program suspension. Accordingly, this Court should
 3 decline to address this “subsequent development[]” in the instant posture—just as this Court
 4 declined to do when Plaintiffs challenged the termination of cooperative agreements that
 5 occurred after the Court issued the first injunction.¹ *See* Dkt. 45 at 11.

6 Plaintiffs attempt to use the existence of Proclamation 10949—and their accusation that
 7 the implementation of the injunction has slowed to a “near halt”—to justify expanding the
 8 number of people Defendants must process and possibly admit. *See* Pls’ Mot. 4–5. But
 9 Proclamation 10949 only reaches refugee applicants from certain countries, and, here, only
 10 two named Plaintiffs are potentially covered by it.² And even then, those named Plaintiffs and
 11 putative class members from countries designated in Proclamation 10949 may ultimately
 12 avoid being impacted should the Secretary of State find their entry in the national interest and
 grant them a case-by-case exception. *See* Proclamation 10949 § 4(c)–(d).

13 If anything, it is Plaintiffs who, by claiming an “emergency,” attempt to dramatically
 14 swell the ranks of individuals eligible for relief under that narrow carveout—using
 15 Proclamation 10949 as a pretext to argue for immediate processing of multiple groups of
 16 people well beyond the identified cohort of 160 individuals. *See* Pls’ Mot. 4–5 (asking the
 17 Court to apply rebuttable presumptions to individuals outside the current group of 160). But
 18 there is no emergency, where processing of that group is underway and will continue to take

19
 20 ¹ Should Plaintiffs move to amend or supplement their complaint to challenge the Proclamation, Defendants would oppose
 21 because there is no dispute the Proclamation is a valid exercise of the President’s § 1182(f) authority. *See Hawaii*, 585
 U.S. at 684 (explaining in a largely identical context that § 1182(f) “exudes deference to the President” and “vests [him]
 with ‘ample power’ to impose entry restrictions in addition to those elsewhere enumerated in the INA”).

22 ² Plaintiffs Rachel and Ahmed may be impacted by the Proclamation due to their connections to Afghanistan, which is a
 23 designated country. Proclamation 10949 §§ 1(f), 2(a); *see* Dkt. 15-21 (Plaintiff Ahmed, while born in Pakistan, appears
 to only have an Afghanistan passport), 15-22 (Plaintiff Rachel seeks to sponsor an Afghan family).

place, consistent with the Ninth Circuit’s order and the President’s independent exercise of authority in Proclamation 10949.

II. Individuals whose travel was cancelled for reasons unrelated to the USRAP Order do not fall within the Ninth Circuit’s narrow carveout.

Contrary to Plaintiffs’ assertion, Defendants have not misled the Court in its implementation of the Ninth Circuit’s stay order. *See* Pls’ Mot. 5. Plaintiffs, for the first time, raise an argument that the injunction should apply to anyone who had travel booked at *any* time prior to January 20, 2025, and cancelled for *any* reason, even if unrelated to the USRAP Order. They knowingly seek to extend the substantially narrowed injunction well beyond its intended purpose. The Circuit has twice clarified who is an “injunction-protected” refugee. A third clarification should not be required.

In creating a narrow carveout from its larger stay of this Court’s injunction, the Ninth Circuit considered the exigencies of this case and determined those most likely to suffer irreparable injury were those who were “conditionally approved and *in transit*” when the USRAP Order took effect. *Pacito*, No. 25-1313, Dkt. 46.1 at 4 (emphasis added). Specifically, the carveout applies to individuals who, *inter alia*, had “arranged and confirmable” travel plans to the United States. *Id.* The Circuit also stressed that the carveout must be read narrowly and applies *only* to individuals with a strong reliance interest arising prior to January 20 comparable to that of Plaintiff *Pacito*. *Id.*, Dkt. 64.1 at 2; Dkt. 56 at 5, 137–141. Plaintiffs now attempt to stretch this definition well beyond its intended meaning.

The Ninth Circuit did not envision the narrowed injunction to include refugees with travel scheduled prior to January 20 whose travel was not in fact cancelled on account of the USRAP Order. Thus, contrary to Plaintiffs’ assertion, they would not (and should not) be entitled to protection of an injunction that is intended to enjoin application of the USRAP Order. It is simply too hypothetical and tenuous for this Court to conclude that these individuals would have resolved the issues that led to their cancellations such that the only

1 remaining bar to a reliable future travel date would have been the USRAP Order itself. *See,*
 2 *e.g., Clapper v. Amnesty Int'l*, 568 U.S. 398, 410 (2013) (Article III's causation
 3 requirement not satisfied by "a highly attenuated chain of possibilities").

4 Further, Plaintiffs do not even endeavor to identify the time period prior to January 20
 5 that, in their view, would render an individual eligible under the Ninth Circuit's carveout—
 6 the only parameter they propose is that the travel cancellation have taken place before that
 7 date. If Plaintiffs had their way, the Ninth Circuit's carveout would encompass individuals
 8 whose travel was cancelled months or even years prior to January 20. But neither this Court's
 9 injunction nor the Circuit's stay and clarification orders contemplate the inclusion of any and
 10 all refugee applicants who might have had their travel cancelled at any point before January
 20 even without any connection to—let alone injury resulting from—the USRAP Order.

11 The general rule regarding the scope of preliminary injunctive relief is for it to "be no
 12 more burdensome to the defendant than necessary to provide complete relief to the plaintiffs
 13 before the court." *Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 908 F.3d 476,
 14 511 (9th Cir. 2018); *see Trump v. CASA*, No. 24A884, 2025 WL 1773631, at *3 (June 27,
 15 2025) ("complete relief" "not synonymous with 'universal relief,'" but "a narrower concept
 16 that allows courts to administer complete relief *between the parties*" (cleaned up)). Not only
 17 would extending injunctive relief to anyone whose travel had been cancelled before January
 18 20 be overly burdensome to Defendants, it would also require an unsustainably overbroad
 19 reading of the Ninth Circuit's tailored injunction—far beyond the Circuit's confirmed intent.
 20 Even if this Court were to overlook that the travel cancellations of this large and unbounded
 21 pool of people were completely divorced from the USRAP Order, Plaintiffs fail to articulate
 22 how they could even show reliance interests comparable to those of Plaintiff Pacito—after all,
 23 someone who had their travel cancelled long ago for reasons unrelated to the USRAP Order
 could not have been "in transit" at the time the Order was issued.

1 Ultimately, Plaintiffs' proposal, if accepted, would stretch the Ninth Circuit's carveout
2 to the point where it would "swallow the entire stay order." *Pacito*, No. 25-1313, Dkt. 46.1 at
3 2. This Court must reject such a baseless and unrestrained expansion of the Circuit's stay.
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24 Defendants' Response in Opposition to
Plaintiffs' Motion for Emergency Conference - 7

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1 DATED this 1st day of July, 2025.

2 Respectfully submitted,

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I certify that this memorandum contains 2,091 words, in compliance with the Local Civil Rules.